

Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

ORIGINAL
FILE

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

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To the Commission:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF MSTV

The Association for Maximum Service Television, Inc. ("MSTV")^{1/} hereby comments on the Commission's Notice of Proposed Rulemaking in the above captioned proceeding ("Notice"). MSTV strongly supports the Commission's decision not to include the 1990-2110 MHz auxiliary broadcast spectrum in a spectrum reserve for emerging telecommunications technologies.^{2/} Television broadcasters and cable operators use the 1990-2110 MHz band for mobile electronic news gathering ("ENG"), intercity relays, and studio-to-transmitter links. These services are essential components of the broadcast system and enable broadcasters to provide live "on

^{1/} MSTV is a trade association representing over 250 commercial and noncommercial broadcast television stations throughout the United States on issues relating to the technical quality of the broadcast signal.

^{2/} MSTV also joins in and supports the comments filed this day by the National Association of Broadcasters ("NAB"), the Radio-Television News Directors Association ("RTNDA"), the Cable-Satellite Public Affairs Network ("C-SPAN"), the Association for Maximum Service Television, Inc. ("MSTV") and Turner Broadcasting System, Inc. ("Turner") (the "June Joint Comments").

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location" coverage of events that are of great public interest.

I. **THE COMMISSION HAS CORRECTLY DETERMINED NOT TO REALLOCATE THE 2 GHZ BROADCAST AUXILIARY SPECTRUM TO THE PROPOSED EMERGING TELECOMMUNICATIONS TECHNOLOGIES RESERVE BAND.**

MSTV supports the Commission's conclusion not to reallocate the 2 GHz broadcast auxiliary band to the proposed emerging telecommunications technologies reserve bands because (a) the 1990-2110 MHz band is already heavily used by television broadcasters and cable operators, (b) no suitable alternative frequency band exists for broadcast auxiliary services, and (c) the implementation of advanced television will increase the ever-growing demand for broadcast auxiliary spectrum, particularly this band.

A. **The Commission Properly Concluded that the 1990-2110 MHz Band Is Currently Heavily Used By Television Broadcasters and Cable Services.**

The study conducted by the Commission's Office of Engineering and Technology ("OET Study") revealed that the 1990-2110 MHz band is already heavily used by television broadcasters and cable operators. See Notice at 18. This conclusion is consistent with the comments and engineering reports submitted by MSTV and other commenters in the Commission's proceeding concerning the establishment of new

personal communications services ("PCS").^{3/} These commenters noted that the 1990-2110 MHz band is seriously congested in most major markets. This congestion requires existing users to engage in intensive coordination that is becoming increasingly difficult and burdensome and, in a growing number of instances, impairing the development and growth of new and existing broadcast and cable news operations and precluding full coverage of breaking news events.

B. It Is Not Feasible To Relocate Auxiliary Service Users To Another Frequency Band.

One of the factors the Commission is considering in evaluating potential spectrum for emerging telecommunications technologies is the feasibility of relocating the existing licensees. See Notice at 10. The OET Study properly found that it is not feasible to relocate auxiliary service users to another frequency band.

The other broadcast auxiliary bands (i.e., the 6875-7125 MHz and 12.7-13.25 GHz bands) fail to provide broadcasters with a feasible alternative to the 1990-2110 MHz band, as these bands are severely congested and technically are best suited for mobile ENG operations. See June Joint Comments at 10. Moreover, these higher-frequency bands cannot accommodate the longer pathlinks required by the services

^{3/} See, e.g., Reply Comments of MSTV, Gen. Docket No. 90-314 (January 5, 1992); Joint Comments of the NAB, RTNDA, and C-SPAN, Gen. Docket No. 90-314 (January 9, 1992) ("January Joint Comments").

presently employed in the 1990-2110 MHz band. In the Second Report and Order and Further Notice of Proposed Rulemaking, MM Doc. No. 87-268 at 46 (May 8, 1992) ("Second Report"), the Commission itself recognized that, other than the 1990-2110 MHz band, "there is no additional spectrum at hand for broadcast auxiliary services."

In addition to these technical problems, requiring broadcasters to relocate to another frequency band or, where technically feasible, to migrate to other media (e.g., satellite interconnection) would result in substantial disruption of vital news service and would impose enormous costs on broadcasters. Given the precarious financial position many broadcasters already find themselves in today, these costs could threaten the continued universality of the broadcast service. See Broadcast Television in a Multichannel Marketplace, 6 F.C.C. Rcd. 3996, 4001 (1991).

C. The Present Scarcity of Spectrum in the 1990-2110 MHz Band Will Be Aggravated Further By the Advent of Advanced Television.

The implementation of advanced television ("ATV") will aggravate the present scarcity in the 1990-2110 MHz band because the Commission does not intend to allocate additional spectrum for ATV auxiliary services. Indeed, in the Second Report, the Commission recognized "the difficulties that broadcasters are likely to face in meeting their auxiliary service needs for both an ATV and an NTSC channel." Second

Report at 46. Moreover, the Advisory Committee established to study the implementation of advanced television corroborated the findings of the OET and the comments of television broadcasters in the PCS proceeding. According to the Second Report, the Advisory Committee observed that "the broadcast auxiliary spectrum is already congested, most severely in major markets, where ATV implementation will first occur." Id. Notwithstanding the seriousness of this problem, the Commission rejected the entreaties of the broadcast industry for additional auxiliary spectrum (see Joint Broadcaster Comments, MM Docket No. 87-268 at 35-36 (December 20, 1991)), and determined that broadcasters would have to make do with their existing auxiliary allocations. Id.

MSTV continues to believe that the existing broadcast auxiliary spectrum simply will not be adequate to satisfy the new demand created by ATV and that the failure to allocate additional spectrum may undermine the ability of local broadcasters and their networks to implement ATV ENG operations. But a failure to retain the meager spectrum now allocated to broadcast ENG operations would be unconscionable and would be wholly inconsistent with other recent Commission decisions. See Second Report at 46 (citing this Notice as evidence that the Commission has "taken pains to protect broadcast auxiliary spectrum allocations in the 1990-2110 MHz band, despite intense, competing need for additional spectrum by new services").

II. THE COMMISSION SHOULD REJECT THE EFFORTS OF UTC TO DEFLECT ATTENTION FROM THE 2 GHZ FIXED SERVICE BAND.

The Utilities Telecommunications Council ("UTC") on May 2, 1992, filed a "Petition for Further Notice of Proposed Rulemaking" ("UTC Petition") asking, among other things, that the Commission issue a further NPRM specifically proposing that the new spectrum reserve be carved out of the 2.5 GHz ITFS and MMDS frequencies and/or the 1990-2110 MHz broadcast auxiliary band. To the extent that the UTC Petition is considered in this proceeding as early-filed comments, it should be rejected. The UTC Petition is grounded in the incorrect premise that the concerns of broadcasters were improperly given more weight than those of fixed users. UTC has presented no evidence that increased use of satellites has reduced the heavy use of the 1990-2110 MHz band. UTC is also incorrect in maintaining that the Notice is procedurally defective.

A. UTC Is Wrong In Stating That The Concerns of Broadcasters Were Given Improper Weight.

The UTC Petition declares that UTC "is at a loss to understand why the concerns of broadcasters were given more weight then [sic] those of the utility, public safety, petroleum and railroad industries." UTC Petition at 18-19. UTC ignores the fact that the OET Study carefully identified and evaluated each frequency based on five clearly articulated and rational factors. After carefully reviewing the OET Study

and its recommendations, the Commission was able to determine that it is technically feasible to relocate fixed microwave users to higher frequency bands or alternative media. See Notice at 20. By contrast, the OET Study revealed that no alternative spectrum exists for auxiliary broadcast users, and that the already crowded 1990-2110 MHz band will only become increasingly congested with the advent of ATV. The Commission carefully considered the concerns of both television broadcasters and fixed microwave users and based their differential treatment on sound engineering principles.^{4/}

B. UTC Is Incorrect In Maintaining That the Notice Is Procedurally Defective.

UTC states that the Notice is somehow procedurally defective because it is "based on a wholesale adoption of the OET Study's recommendation" and does not invite interested parties to comment on this recommendation. UTC Petition at 6. This suggestion is frivolous. The OET Study identified the 2 GHz band as the optimal band for emerging telecommunications technologies, and the Notice simply proposes to adopt the OET's conclusions and recommendations. The Commission

^{4/} UTC asserts without any authority or data whatsoever that the growing use of satellite facilities is evidence that the broadcast auxiliary frequencies are in less demand. UTC Petition at 19. The short answer is that the OET Study and the studies conducted by other user groups, see, e.g., January Joint Comments at 3, demonstrate the current auxiliary bands are severely congested notwithstanding widespread introduction of satellite facilities and are growing more crowded every day.

properly placed a copy of the OET Study in the record of this proceeding and requested comments on its recommendations. See Notice at footnote 10. While UTC complains that the Notice did not "specifically request comment on the choice of the band" (UTC Petition at footnote 5), the Commission clearly invited parties to comment on OET's analysis which both explicitly and implicitly involved consideration of other frequency bands, including the 2 GHz broadcast auxiliary band.

UTC maintains that, because the Notice allegedly focusses exclusively on the 2 GHz fixed service band, the Commission could not select another band without first releasing a further notice of proposed rulemaking. See UTC Petition at 7. Even if this were true, it would be relevant only if the Commission fails to adopt OET's recommendations. There simply cannot be any serious doubt that interested parties such as UTC will have been given a full opportunity to comment on the Commission's proposals and to persuade the Commission to abandon the 2 GHz band in favor of another band.

III. CONCLUSION.

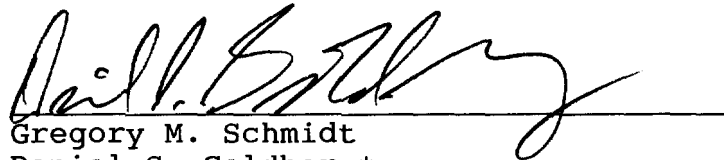
For the foregoing reasons, and for the reasons set forth in the June Joint Comments, MSTV supports the Commission's decision not to reallocate the 1990-2110 MHz auxiliary broadcast spectrum for emerging telecommunications

technologies and urges the Commission to reject the UTC
Petition.

Respectfully submitted,

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